

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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JAMES E. FLAHERTY,

Plaintiff,

- against -

SOUTHAMPTON TOWN POLICE  
DEPARTMENT, et al.,

Defendants.

**REPORT AND  
RECOMMENDATION**

CV 02-5516 (DRH) (JO)

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**JAMES ORENSTEIN, Magistrate Judge:**

On March 3, 2005, I issued an Order for Written Status Report in the above-captioned case, noting the lack of activity since April 18, 2003, and directing that *pro se* plaintiff James E. Flaherty ("plaintiff") inform the court in writing, within ten days of the date of the order, of the present status of the case. Docket Entry ("DE") 6. Additionally, I advised plaintiff that failure to respond will result in a Report and Recommendation that the case be dismissed for failure to prosecute. *Id.* Plaintiff failed to respond to my order within the requisite 10 days.

On October 15, 2002, plaintiff commenced this case against defendants. By letter dated October 17, 2002, the Pro Se Department of the Clerk's Office notified plaintiff that he was responsible for serving the summons and complaint upon defendants. DE 3. Thereafter, on November 7, 2002, plaintiff filed an amended complaint, claiming violations, among other things, of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*, the Rehabilitation Act, 29 U.S.C. § 701, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and 42 U.S.C. § 1983; plaintiff also asserted several pendent state law claims.

By letter dated April 18, 2003, the Chambers of the Honorable Arthur D. Spatt, to whom the case was assigned, returned certain documents to plaintiff, as the documents did not bear a proper docket number. DE5. Apparently, plaintiff has several cases in the Eastern District of New York. A review of the docket entries indicates that there has been no activity in this case subsequent to the April 18 letter. Plaintiff has not effected service of either the complaint or amended complaint and has taken no further steps to prosecute this case.

Therefore, I recommend that the case be dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

This Report and Recommendation will be filed via the court's Electronic Case Filing system. Additionally, a copy will be mailed to plaintiff. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten days. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. § 636 (b)(1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

**SO ORDERED.**

Dated: Central Islip, New York  
April 4, 2005

/s/ James Orenstein  
JAMES ORENSTEIN  
U.S. Magistrate Judge